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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ARTHUR M. SMITH IV, RICHARD TRAN,  
and AARON T. MOODY, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

UNITED AIRLINES, INC.;  
the INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS; the INTERNATIONAL  
ASSOCIATION OF MACHINISTS AND  
AEROSPACE WORKERSLOCAL LODGE  
1781; and DOES 1 to 10.

Defendants.

Case No.: 3:14-cv-01763-EDL

**SECOND AMENDED COMPLAINT  
FOR DAMAGES AND INJUNCTIVE  
RELIEF**

**(1) BREACH OF CONTRACT**

**(2) BREACH OF DUTY OF FAIR  
REPRESENTATION**

**JURY TRIAL DEMANDED**

Plaintiffs Arthur M. Smith IV, Richard Tran, and Aaron T. Moody (collectively, “Plaintiffs”) file this Complaint against United Airlines, Inc. (“UAL”) and the International Association of Machinists and Aerospace Workers, Local Lodge 1781 (“IAMAW”) (collectively, “Defendants”).

**JURISDICTION AND VENUE**

1. Pursuant to Fed. R. Civ. P. 23, Plaintiffs bring Claims I and II as a class action on behalf of themselves and all other similarly situated current and former employees of United Airlines, Inc.
2. This Court has jurisdiction over the breach of duty of fair representation claim pursuant to 29 U.S.C. § 185, 28 U.S.C. §§ 1331 and 1337(a), and 28 U.S.C. §§ 2201 and 2202. The Court

1 has supplemental jurisdiction over Plaintiffs' related state law claim pursuant to 28 U.S.C. §  
2 1367 because it arises out of the same transaction.

3 3. Venue is proper in this Court as the acts complained of occurred within this Judicial  
4 District.

5 4. Plaintiffs have been damaged in excess of the jurisdictional amount of this Court.

### 6 INTRODUCTION

7 5. This is an action for damages and injunctive relief for Breach of Contract and Breach of  
8 the Duty of Fair Representation. This action arises out of events involving Plaintiffs and  
9 Defendants UAL and IAMAW acting in concert to deny Plaintiffs their rights to be paid  
10 bargained-for wages, and accrue bargained-for longevity and seniority.

### 11 CLASS ALLEGATIONS

12 6. Plaintiffs sue individually and as representatives of a class pursuant to Fed. R. Civ. P. 23.  
13 The class is defined as all persons (1) who worked at the SFO airport location as Ramp  
14 Servicemen at any time during the time period 2011 to December 2013, who performed Lead  
15 Ramp Serviceman duties without receiving Lead Ramp Serviceman pay, longevity, or seniority.

16 7. The claims, if certified for class-wide treatment, may be pursued by all similarly situated  
17 persons who do not opt out of the Class.

18 8. Plaintiffs, individually and behalf of all others similarly situated, seek relief on a class  
19 basis challenging Defendant IAMAW's breach of the duty of fair representation and UAL's  
20 breach of contract claims as a hybrid claim under

21 9. Upon information and belief, the class consists of approximately 100 United Airlines,  
22 Inc. Ramp Servicemen employees, making the class sufficiently numerous that joinder of all  
23 members is impractical.

24 10. The number and identity of other potential class members may be determined from  
25 Defendant's records and potential class members may be readily notified of the pendency of the  
26 action.

27 11. The acts complained of herein affected all class members, creating questions of law and  
28 fact common to the entire class. Questions of law and fact common to members of the Class

1 predominate over questions that may affect only individual members because Defendants have  
2 acted on grounds generally applicable to all members. Questions of law and fact common to  
3 Plaintiffs and the class include:

- 4 a. whether UAL employed members of the class; b. whether IAMAW represented
- 5 members of the class;
- 6 c. whether UAL breached the Collective Bargaining Agreement;
- 7 d. whether IAMAW breached the duty of fair representation in failing to represent the
- 8 Class;
- 9 e. whether the class has been damaged by the acts and omissions of UAL and IAMAW.

10 12. The individually named Plaintiffs have a commonality of interests, having suffered the  
11 same injuries shared by all class members.

12 13. The claims of the individually named Plaintiffs are typical of, and do not conflict with,  
13 the claims of other class members.

14 14. The class representatives have the same interest in pursuing this action as the members of  
15 the class and will fairly and adequately protect the interests of the class.

16 15. The class representatives hold the same job title in the same work location, and Plaintiffs  
17 have retained qualified counsel experienced in class-action and employment practice to represent  
18 them in this matter.

19 16. Separate actions brought by various class members would create a risk of inconsistent  
20 rulings with respect to individual class members that would establish incompatible standards of  
21 conduct for all parties.

22 17. Furthermore, decisions with respect to individual class members would, as a practical  
23 matter, be dispositive of the interests of the other members not parties to the individual suits.

24 18. All claims arise from the same events. Plaintiffs are seeking back pay, longevity, and  
25 seniority rights that were wrongfully denied to members of the class.

26 19. IAMAW and UAL have acted and refused to act on the same basis that applies generally  
27 to the class; as such, injunctive and declaratory relief are appropriate with respect to the entire  
28 class.

1 20. Plaintiffs have no interest that is contrary to or in conflict with members of the class.

2  
3 **THE PARTIES**

4 21. Plaintiff Arthur M. Smith IV ("Mr. Smith") is currently employed by UAL as a Lead  
5 Ramp Serviceman at the San Francisco International Airport ("SFO").

6 22. Plaintiff Richard Tran ("Mr. Tran") is currently employed by UAL as a Lead Ramp  
7 Serviceman at SFO.

8 23. Plaintiff Aaron T. Moody ("Mr. Moody") is currently employed by UAL as a Lead Ramp  
9 Serviceman at SFO.

10 24. Defendant United Airlines, Inc. is a Delaware Corporation licensed to and doing business  
11 within this judicial district.

12 25. Defendant International Association of Machinists and Aerospace Workers is a labor  
13 union operating in the State of California, County of San Francisco.

14 26. Defendant International Association of Machinists and Aerospace Workers Local Lodge  
15 1781 is a labor union operating in the State of California, County of San Francisco.

16 27. Plaintiffs are ignorant of the true names and capacities of Defendants sued herein as Does  
17 1-10, inclusive, and Plaintiffs therefore sue such Defendants by such fictitious names. Plaintiffs  
18 will amend this complaint to allege their true names and capacities when ascertained. Plaintiffs  
19 are informed and believe and thereon allege that each of these fictitiously named Defendants is  
20 responsible in some manner for the occurrences, acts, and omissions alleged herein and that  
21 Plaintiffs' injuries as alleged herein were proximately caused by such aforementioned  
22 Defendants.

23 **FACTS COMMON TO ALL CAUSES**

24 28. Plaintiffs are all currently employed by UAL as Lead Ramp Service Employees and  
25 represented by IAMAW.

26 29. In October, 2010, the predecessor entities to Defendant United Airlines Inc., to wit,  
27 United Air Lines, Inc. and Continental Airlines, Inc. merged. At the time of the merger, the  
28 Ramp Servicemen employed by Defendant United Airlines, Inc., were represented by IAMAW,

1 and the Ramp Servicemen employed by Continental Airlines, Inc., were represented by the  
2 Teamsters.

3 30. In or about August, 2011, the combined workforces of Ramp Servicemen at the newly  
4 merged United/Continental airline voted on which union would represent the combined  
5 workforce, resulting in IAMAW representing all Ramp Servicemen in the newly-merged  
6 company.

7 31. Between 2011 and November 2013, the terms and conditions of Plaintiffs' employment  
8 with UAL continued to be governed by the company-wide collective bargaining agreement  
9 entitled the "2005-2009 Agreement".

10 32. Plaintiffs Smith, Moody and Tran began working at United's San Francisco International  
11 Domicile in 2011 as Ramp Serviceman and were paid \$13.26, \$13.26, and \$15.15 respectively  
12 per hour.

13 33. Pursuant to the 2005-2009 Agreement, Ramp Serviceman duties are broken down into  
14 two categories: "Ramp Serviceman" and "Lead Ramp Serviceman" with different pay schedules  
15 and classifications.

16 34. Article IV, Sections (A)-(B) of the 2005-2009 Agreement defines the job responsibilities  
17 of the "Ramp Serviceman" and "Lead Ramp Serviceman" positions.

18 35. According to the 2005-2009 Agreement, a Ramp Serviceman is responsible for servicing  
19 of aircraft at ramps and terminals including the loading, stowing, unloading, and pick-up and  
20 delivery of all cargo including mail, express, baggage, freight, Company material, buffet and  
21 food supplies in accordance with flight loading plans, the preparation of records in connection  
22 therewith, interior cabin cleaning and setup and operation of automotive and other ramp  
23 equipment for servicing aircraft, the preparation of loading plans, maintaining the ramp area and  
24 equipment in a clean, presentable condition and other general ramp service work. In addition to  
25 the aforementioned tasks the the Ramp Serviceman is responsible for the servicing of aircraft  
26 and automotive equipment with fuel, lubricants and related supplies, including the operation of  
27 fueling and lubricating equipment at ramps, shops and storage facilities.  
28

1 36. The multiple and various duties of the Ramp Serviceman set forth in paragraph 34 above  
 2 are not subject to any rights of seniority, as these duties are subject to a "Letter Agreement",  
 3 numbered "Letter 74-8R May 24, 1974 Revised November 25, 1987", and made a part of the  
 4 2005-2009 Agreement, which sets forth a procedure for allowing individual Locals to suggest  
 5 priorities and seniority for particular assignments of the various duties of Ramp Serviceman, and  
 6 to negotiate the same on an individual and local basis. The letter agreement is applies only to  
 7 the job duties of the Ramp Serviceman, and makes no mention whatsoever of the Lead Ramp  
 8 Serviceman position or duties.

9 37. According to the 2005-2009 Agreement a Lead Ramp Serviceman performs the same job  
 10 responsibilities as a Ramp Serviceman but additionally may be required to lead and direct the  
 11 work of other employees of lower classifications, and to give instruction and training to  
 12 employees of the same or lower classification.

13 38. According to the 2005-2009 Agreement the number of employees that reported to a Lead  
 14 Ramp Serviceman could consist of any number of employees but in no case could there be more  
 15 than twelve (12) employees within this group.

16 39. According to the 2005-2009 Agreement Article XI (A),

17  
 18 Vacancies of sixty (60) days or longer in the Lead Ramp Serviceman . . . shall be  
 19 bulletined at the point where the vacancy exists and if not filled locally shall then  
 20 be bulletined at all service stations, storerooms and warehouses where employees  
 covered by this Agreement are employed. . . .

21 40. According to the 2005-2009 Agreement Article XI (H),

22 . . . Employees temporarily transferred from their regular work to the work of any  
 23 other classification covered by this Agreement shall receive their regular rate of  
 24 pay or the minimum rate of the classification, plus longevity, whichever is the  
 higher, for performing such work.

25 41. According to the 2005-2009 Agreement Article XI (I),

26 In the case of vacancies not expected to exceed sixty (60) days, the Company may  
 27 select an employee to fill such vacancy on a temporary basis without bulletining  
 28 the job. In case of vacancies in higher classifications, the selection will be based on

1 seniority insofar as practical and wage claim will be paid where deviation from  
2 normal selection practice for temporary assignments is due to Company  
3 convenience. At the end of sixty (60) days the vacancy will be filled as otherwise  
4 provided in this Agreement. Exclusive of vacation requirements, when a Lead job  
5 in a work group for a full shift is regularly filled each work week by temporary  
6 upgrading an employee more than half time (more than 20 hours per week) for  
7 sixty (60) days, a permanent Lead vacancy will be bulletined and awarded.

8 42. Between 2011 and November 2013 Lead Ramp Serviceman pay was \$21.19 per hour.

9 43. Between 2011 and November 2013, Plaintiffs at SFO were required to perform Lead  
10 Ramp Serviceman duties without being paid the minimum Lead Ramp Serviceman rate for the  
11 classification, as required by the 2005-2009 Agreement, Article XI (H).

12 44. Between 2011 and November 2013, Plaintiffs were required to perform Lead Ramp  
13 Serviceman duties without accruing longevity, as required by the 2005-2009 Agreement, Article  
14 XI (H).

15 45. Between 2011 and November, 2013, vacancies of sixty (60) days or longer in the Lead  
16 Ramp Serviceman existed routinely at the SFO hub; however, no vacancies were bulletined at  
17 any service stations, storerooms, or warehouses as required by the 2005-2009 Agreement, Article  
18 XI (A).

19 46. Between 2011 and November, 2013, Lead Ramp Serviceman jobs in Plaintiffs' work  
20 groups for a full shift were regularly filled each work week without temporarily upgrading  
21 Plaintiffs and other Ramp Servicemen for more than 20 hours per week in excess of sixty (60)  
22 days; however, no permanent Lead Ramp Servicemen vacancies were either bulletined or  
23 awarded, in violation of the 2005-2009 Agreement, Article XI (A) and (H).

24 47. In approximately August 2012, Plaintiffs and other Ramp Serviceman began to complain  
25 to their supervisors that they were continuously required to perform Lead Ramp Serviceman  
26 duties without Lead Ramp Serviceman pay or longevity as required by the 2005-2009  
27 Agreement, Article XI (H).

28 48. Rather than comply with the express provisions of the 2005-2009 Agreement as set forth  
above, in November, 2012, Defendants created a completely new classification of Ramp  
Serviceman position, not set forth in the Classification of Positions, Article IV and not

1 contemplated by the 2005-2009 Agreement or any Letter of Agreement attached thereto: “Card-  
2 Person”.

3 49. Upon information and belief, Defendants agreed to create and maintain the completely  
4 new classification outside the express provisions of the 2005-2009 Agreement for an improper  
5 purpose, in order to bide time until the ratification of the new 2013 Agreement, without paying  
6 Plaintiffs and others similarly situated their bargained-for increases in wages and longevity.

7 50. Upon information and belief, Defendant IAMAW Local 1781 agreed with Defendant  
8 United Airlines, Inc., to maintain a status quo throughout the latter part of 2012 through 2013 by  
9 holding in abeyance any grievances that would result in substantial changes to pay or seniority,  
10 pending the negotiation and ratification of the 2013 Agreement.

11 51. On any given day from 2011 through 2013, there are frequently two or more work  
12 groups of Ramp Servicemen worked at SFO. In that case, one group will have an official Lead  
13 whereas the remaining group(s) have “unofficial” Lead referred to as “Card Person(s)” who  
14 perform all of the duties of the Lead Ramp Serviceman position but do not receive the  
15 commensurate daily pay increase or allocation of longevity.

16 52. In January 2013, Plaintiff Smith filed a grievance with IAMAW Local 1781 personnel,  
17 Christopher Lusk regarding the Company's continued requirement that Ramp Serviceman  
18 perform Lead duties without Lead pay or longevity.

19 53. Three business days later, Christopher Lusk, at the request of Plaintiff Smith filed a  
20 second step grievance concerning the lack of a response or resolution of Smith's January, 2013  
21 grievance.

22 54. Article XVIII of the 2005-2009 Agreement sets for a “Bargaining and Grievance  
23 Procedure”, which includes the following at Section A.:

24  
25 Should a grievance occur, both the Union and the Company shall make an earnest  
26 effort to ascertain the facts and seek a fair and equitable settlement through the  
following procedure.

27 55. The “Bargaining and Grievance Procedure”, set forth in the 2005-2009 Agreement  
28 specifically addresses the time for bringing grievances at Article XVIII at Section B:



1 In order to document relevant facts, complaints must be lodged promptly after the  
 2 cause giving rise to the incident. The Company shall have no monetary liability  
 3 for any period beyond thirty (30) days prior to the filing of the complaint in  
 4 writing. Any answers not appealed in writing within the specified time limits at  
 5 any step of the procedure shall be considered closed on the basis of such answer,  
 6 unless such time limits have been extended by mutual agreement. Grievances not  
 7 answered within the specified time limits may be appealed to the next step of the  
 8 procedure. Time limits for appeals and decisions, and System Board responses  
 9 will be exclusive of Saturdays, Sundays, and Holidays.

10 56. Plaintiff Smith filed a second level grievance in writing within the time period set forth in  
 11 Article XVIII at Section B, not having received an answer to first level grievance.

12 57. In the alternative, and upon information and belief, Defendants mutually agreed to extend  
 13 the time limits of Article XVIII of the 2005-2009 Agreement to extended the time limit for both  
 14 the Company and the Union to comply with their specific obligations as set forth below, to  
 15 address Plaintiff Smith's grievances until the 2013 Agreement was fully negotiated and ratified.

16 58. The "Bargaining and Grievance Procedure", set forth in the 2005-2009 Agreement  
 17 specifically addresses the procedure for Step 2 grievances at Article XVIII at Section C:

- 18 1. An employee having a complaint should first discuss the matter with his  
 19 Supervisor who will attempt to settle the matter.
- 20 2. If the issue is not satisfactorily resolved, he may request the Steward to  
 21 handle the matter with the Supervisor.
- 22 3. If the matter is not resolved the Steward will reduce the facts to writing on a  
 23 form provided by the Company. The Supervisor shall then have three (3) days  
 24 to write his response. Each party shall get a copy of the completed form. Such  
 25 document will not prejudice either party at future steps of the Grievance  
 26 Procedure.

27 59. Plaintiff Smith complied with the requirements of Article XVIII, Section C of the 2005-  
 28 2009 Agreement by discussing the matter with supervisory authorities, then requesting  
 Christopher Lusk to handle the matter.

60. Upon information and belief, Union Steward Mr. Lusk reduced the facts to writing and  
 the Company form and submitted it. Upon information and belief, no supervisor responded to  
 the grievance in writing or otherwise, nor did Defendant Local 1781 follow up to obtain a  
 written response to enable the next level.

61. The “Bargaining and Grievance Procedure”, set forth in the 2005-2009 Agreement specifically addresses the procedure for Step 2 grievances at Article XVIII at Section D:

The Local Committee shall determine if a grievance exists. If so, a grievance must be filed within fifteen (15) days from the Supervisor's written response. Such grievance will be filed on a standard form and shall be considered by the designated station or base management representative(s) and the Local Union Committee. Grievance hearings will be scheduled within fifteen (15) days of receipt of such appeal. The Local Committee may specify that a specific grievance shall be heard by the Department or Station Head rather than his designee. A written answer shall be provided within five (5) days after discussions have concluded. The Union may appeal the grievance to the next step of the procedure within fifteen (15) days from the date of the Company's written answer. Such appeal may contain any disputed facts or additional germane facts.

62. Upon information and belief, the Local Committee neither considered nor determined whether a grievance existed as to Plaintiff Smith's Grievances, in violation of the specific requirements of Article XVIII of the 2005-2009 Agreement. Defendants did so to subvert the consideration of the Ramp Serviceman being forced to perform Lead Ramp Serviceman duties without commensurate pay, longevity, and seniority until the 2013 Agreement was fully negotiated and ratified.

63. No grievance hearing was scheduled by Defendants. Upon information and belief, no discussions took place. Upon information and belief, the Company provided no written answer, all in violation of the specific requirements of Article XVIII of the 2005-2009 Agreement.

64. The “Bargaining and Grievance Procedure”, set forth in the 2005-2009 Agreement specifically addresses the procedure for the Step 3 procedure as follows at Section E:

If not settled, the grievance shall be reviewed by a representative(s) of the Human Resources Staff and the appropriate Assistant General Chairman. The review will be held within ten (10) days of perfecting such appeal. If unable to reach an agreement, and at the request of the Union, a Step Three Hearing will be scheduled within ten (10) days of the conclusion of the review process. The Company shall provide its written answer within fourteen (14) days from the meeting. If the Union decides to appeal the answer to the System Board, it will submit a written appeal perfecting all facts within forty (40) days from the Company's answer.

1 Copies of the appeal shall be sent to the appropriate labor relations officer and the  
2 System General Chairman.

3 65. Defendants did not settle either of Plaintiff Smith's grievances, nor upon information and  
4 belief, did a representative of the Human Resources Staff and the appropriate General Chairman  
5 review Plaintiff Smith's grievances. Upon information and belief, none of the Step 3 procedures  
6 were followed by Defendants with respect to Plaintiff Smith's grievance.

7 66. Defendants' conscious decisions to flout the specific requirements of the "Bargaining and  
8 Grievance Procedure", set forth in the 2005-2009 Agreement and/or by mutual agreement  
9 indefinitely extend the timeframe for the Company to respond to Plaintiff Smith's grievances  
10 discriminated against the Ramp Servicemen at the SFO hub who were required to work out-of-  
11 classification without attendant pay, longevity, and seniority; whereas their co-worker Ramp  
12 Servicemen in other locations, such as Chicago ORD and Dulles International Airport, who were  
13 forced to perform Lead Ramp Serviceman duties were paid the substantial premium increase in  
14 wages, and received the attendant longevity and seniority required by the 2005-2009 Agreement.

15 67. Defendants' conscious decisions to flout the specific requirements of the "Bargaining and  
16 Grievance Procedure", set forth in the 2005-2009 Agreement and/or by mutual agreement  
17 indefinitely extend the timeframe for the Company to respond to Plaintiff Smith's grievances was  
18 not based upon any legitimate discretion or belief that Plaintiff Smith's grievances had no merit,  
19 since all other United Airlines locations provided under the 2005-2009 Agreement, Lead Ramp  
20 Serviceman pay, longevity, and seniority to all Ramp Servicemen forced to work out-of-  
21 classification as Lead Ramp Servicemen.

22 68. In or about February, 2013, Plaintiff Moody was told by Mr. Ajetomobi, that his  
23 complaint concerning performing Lead Ramp Serviceman duties without commensurate pay or  
24 seniority was covered by Plaintiff Smith's grievances; therefore, IAMAW Local 1781 would not  
25 prepare another grievance in Plaintiff Moody's name.

26 69. In or about February, 2013, Plaintiff Tran was told by Christopher Lusk, that his  
27 complaint concerning performing Lead Ramp Serviceman duties without commensurate pay or  
28

1 seniority was covered by Plaintiff Smith's grievances; therefore, IAMAW Local 1781 would not  
2 prepare another grievance in Plaintiff Tran's name.

3 70. Defendants IAMAW have a policy, pattern, and practice of allowing only one of its  
4 members to grieve a particular workplace practice or policy at any given time, and will not  
5 prepare nor file the grievance of any other member of the union while a grievance of a particular  
6 work practice or policy is still pending.

7 71. Defendants IAMAW abused their policy, pattern, and practice of allowing only one of its  
8 members to grieve a particular workplace practice or policy at any given time, not in the interests  
9 of resolving a widespread contract issue expeditiously, but rather to ensure that all Ramp  
10 Servicemen required to work out-of-classification without commensurate pay, seniority, and  
11 longevity, would not be paid or accrue seniority, longevity ever, and certainly not until IAMAW  
12 had replaced such lead pay with a negligible \$1.75 per hour differential for Lead Ramp Service  
13 Employees in the 2013 Agreement.

14 72. Since arriving at SFO, Mr. Smith, Mr. Tran, and Mr. Moody have each worked hundreds  
15 of days out-of-classification as Lead Ramp Servicemen without the appropriate pay increases,  
16 longevity, or seniority required by the 2005-2009 agreement, and putative class members have as  
17 well worked out-of-classification without commensurate pay, longevity, and seniority.

18 73. Defendants IAMAW held and continue to hold Plaintiff Smith's January 2013 and  
19 February 2013 grievances without formal closure or resolution; thereby prohibiting any other  
20 union member from filing a formal grievance concerning the workplace practices set forth  
21 above.

22 74. Danny Lebron served as representative of the International Union in the geographic  
23 region which included the Company's San Francisco domicile (District 141) as Assistant General  
24 Chair. Among his principal duties were the negotiation, administration, and enforcement of the  
25 successive collective bargaining agreements entered into by the International Union and the  
26 Company.

27 75. On August 23, 2013, counsel for Plaintiffs wrote a letter to Danny Lebron and to Larry  
28 Wing, President of the Local Lodge 1781, on behalf of Ramp Servicemen at the SFO hub,

1 including Plaintiffs, requesting that IAMAW commence a grievance process on the issue of Lead  
2 pay.

3 76. Upon information and belief, because Plaintiff Smith's January and February, 2013  
4 grievances remained under a mutual agreement between Defendants to extend all deadlines for  
5 the grievance, neither Local 1781 nor the IAMAW responded to Plaintiff's counsel's request,  
6 based upon its policy, pattern and practice of not permitting any additional grievance from any  
7 other union member challenging the same workplace practice while another member's grievance  
8 remains pending.

9 77. On November 1, 2013, a new collective bargaining agreement became effective between  
10 United and IAMAW, covering the Plaintiffs' employment in this matter, entitled "Fleet Service  
11 Employees 2013 – 2016 Agreement Between United Airlines and the International Association  
12 of Machinists and Aerospace Workers (IAMAW)" ("2013 Agreement"), setting forth a temporary  
13 Lead Ramp Service Employee process.

14 78. The 2013 Union-Company contract provided as follows:

15  
16 E. Temporary Assignments. Temporary assignments will be filled as outlined  
below:

17  
18 1. Short Duration Assignments. The Company can create and fill vacancies of  
19 less than 60 days for any position within a classification with active employees  
20 for any reason. Any such assignment of 60 days or more will be posted as a  
vacancy as described in Section C above. Exclusive of vacation requirements,  
21 when a Lead job in a work group for a full shift is regularly filled each workweek  
22 by temporarily upgrading an employee more than half of the time for 60  
consecutive days, a regular Lead vacancy will be bulletined and awarded. The  
23 Company and the Union will meet to discuss extenuating circumstances that may  
indicate a permanent Lead is not required for short-term operational needs or  
unexpected outages.

24 79. The 2013 Agreement provides for bid seniority retention by Lead Ramp Service  
25 Employees as follows:

26  
27 4. Bid Seniority Date. An employee's Bid Seniority begins on the date the  
28 employee is placed on the Company's payroll for newly hired regular employees.

For Company employees transferring into this Agreement, Bid Seniority is the date an employee is notified that he or she is awarded an open vacancy. A common seniority date will be assigned when multiple positions are filled at the same time for the same vacancy. **For Lead positions, an employee will both: (a) retain and continue to accrue Bid Seniority in his or her basic classification; and (b) accrue Bid Seniority in the Lead position at the Location/Point beginning the day after the Lead vacancy posting closes.** Employees will stop accruing Bid Seniority and their date will be adjusted for periods of promoted status that exceed 183 days, and for periods on educational and personal leaves of absence that exceed 90 days. Bid Seniority is used for all types of bidding contained in this Agreement except for vacations.

80. The 2013 Agreement does not contain a schedule of Lead Ramp Service Employee pay; rather, it sets "Lead Pay" as a \$1.75 per hour premium or differential. In contrast, the 2005-2009 Agreement set forth a separate schedule for Lead Ramp Serviceman pay that was substantially higher.

81. As a direct result of Defendant IAMAW's policy, practice, and procedure of either flouting the specific grievance procedures as set forth above, or in the alternative holding Plaintiff Smith's grievance open while simultaneously rejecting the filing of any other grievance concerning Lead pay throughout 2013 through the ratification of the new contract with United November, 2013, Plaintiffs have been prevented from formal resolution of the grievance.

82. As a direct result of Defendants' conduct, as set forth above, Plaintiffs have been damaged under both the 2005-2009 Agreement and the 2013 Agreement, as the failure to resolve Plaintiff Smith's grievance prohibited Plaintiffs and other similarly-situated SFO-based Ramp Servicemen from accruing pay, longevity, and seniority which would have grandfathered them into a higher pay structure, and the benefits of longevity and seniority in the various shift bidding, vacation, overtime, etc. set forth in the 2013 Agreement as allocated by seniority and longevity.

83. Plaintiffs were not present in the contract negotiations between the Company and IAMAW throughout 2013, when the Lead Ramp Service Employee pay premium clause was first introduced into the collective bargaining agreement.

84. Based upon Plaintiffs' and other Ramp Serviceman's complaints at SFO, Danny Lebron

1 and Richard Delaney knew the Company's position concerning Lead Ramp Serviceman staffing  
 2 and the creation of a "Card-Person" designation from the outset of the negotiations. This fact  
 3 was not made known to Plaintiffs at any time during the succeeding collective bargaining  
 4 negotiations.

5 85. Danny Lebron and Richard Delaney knew that the entire pay and seniority allocation of  
 6 the 2013 Agreement was tainted to the detriment of these union member employees; and that  
 7 such bargaining for the 2013 Agreement with the Company was in bad faith.

8 **PLAINTIFF ARTHUR M. SMITH IV**

9 86. Mr. Smith has been a full-time employee of UAL since November 2006. From  
 10 November 2006 to February 2008, he worked at SFO. From February 2008 to June 2008, he  
 11 worked in Dulles International Airport ("Dulles") in Washington D.C. From June 2008 to  
 12 August 2011, he worked in Chicago. He then returned to SFO but worked in another  
 13 subdivision. Mr. Smith has worked in his current position as a Ramp Serviceman at SFO since  
 14 around June 2012.

15 87. In 2008, as a UAL employee and IAMAW member in both Dulles and Chicago, Mr.  
 16 Smith was paid the correct wage per the Agreement, approximately \$21.00 per hour, whenever  
 17 he performed Lead Ramp Serviceman duties on a temporary basis.

18 88. However, in 2011, when Mr. Smith returned to SFO, he first witnessed Ramp Servicemen  
 19 performing the Lead duties but not receiving the appropriate daily raise for their responsibilities.

20 89. Between his first and second stints at SFO, Mr. Smith has worked at least 200 days as a  
 21 Lead and not received the wages, longevity, and seniority which attach to such temporary  
 22 assignments, pursuant to the 2005-2009 Agreement, Article. XI (H).

23 90. During Mr. Smith's second stint at SFO, he earned approximately \$13.36 per hour. He  
 24 currently earns \$14.40 per hour.

25 91. As set forth above, on or around January 31, 2013, Mr. Smith filed a grievance regarding  
 26 not receiving the proper pay, longevity, and seniority for working out-of-classification as Lead  
 27 Ramp Serviceman.

28



1 92. As set forth above, Defendants IAMAW did not follow the specific requirements of  
 2 Article XVIII of the 2005-2009 Agreement, and/or in the alternative mutually agreed with the  
 3 Company to extend indefinitely all time periods therein to respond to Mr. Smith's grievance  
 4 through the ratification of the 2013 Agreement, which substantially reduced the amounts  
 5 Plaintiff would receive for Lead Ramp Serviceman (Employee) pay.

6 93. In early February 2013, Mr. Smith filed a second grievance regarding IAMAW's failure  
 7 to respond in a timely manner to his January 2013 grievance.

8 94. As set forth above, Defendants IAMAW did not follow the specific requirements of  
 9 Article XVIII of the 2005-2009 Agreement, and/or in the alternative mutually agreed with the  
 10 Company to extend indefinitely all time periods therein to respond to Mr. Smith's grievance  
 11 through the ratification of the 2013 Agreement, which substantially reduced the amounts  
 12 Plaintiff would receive for Lead Ramp Serviceman (Employee) pay.

13 **PLAINTIFF RICHARD TRAN**

14 95. In May 2004, Mr. Tran started working for UAL in San Diego, where he stayed until  
 15 January 2012. From January 2012 to the present, Mr. Tran has been employed by UAL at SFO.

16 96. During his time in San Diego, Mr. Tran worked numerous times as a Lead and received  
 17 the appropriate pay increase.

18 97. When his first week at SFO in January 2012, however, Mr. Tran noticed that Lead Ramp  
 19 Servicemen regularly delegated all of their work to Ramp Servicemen, whom did not receive the  
 20 appropriate daily pay increase.

21 98. Between January 2012 and November 2013, Mr. Tran was periodically assigned to  
 22 perform the job duties of a Lead and on several occasions was not paid the correct daily rate.

23 99. When Mr. Tran started at SFO, he earned approximately \$15.44 per hour. Currently, his  
 24 hourly pay rate is approximately \$17.98.

25 100. In early February 2013, Mr. Tran filed a grievance with IAMAW regarding the lack of  
 26 appropriate compensation for performing Lead Ramp Serviceman duties. A couple days later,  
 27 IAMAW Shop Steward Christopher Lusk ("Mr. Lusk") informed Mr. Tran that only one  
 28 grievance about a work issues could be active at a time and reiterated the phrase, "this is the way



1 it's done in San Francisco,” and “we don't need Leads in San Francisco” or words to that effect.

2 101. Though Mr. Tran felt that the lack of appropriate compensation for performing Lead  
3 duties was wrong, he became fully aware of the animus of Defendants IAMAW to Ramp  
4 Servicemen at SFO when all Plaintiffs were converted to Lead Ramp Service Employees under  
5 the 2013 Agreement, but with the negligible \$1.75 per hour differential rather than the \$21.98  
6 rate Plaintiffs should have been paid when working out-of-classification.

7 102. Mr. Tran's grievance was held in abeyance by Defendants IAMAW by subverting their  
8 policy, pattern, and practice of not processing any other member's grievance while another  
9 grievance is pending challenging the same work practice, because it was holding the first  
10 grievance open indefinitely and/or in the alternative flouting the specific grievance procedures  
11 set forth in Article XVIII of the 2005-2009 Agreement.

12 **PLAINTIFF AARON T. MOODY**

13 103. In May 2006, Mr. Moody began his employment with UAL in Denver. From  
14 approximately July 2006 to April 2007, he worked for UAL in Omaha, Nebraska. He returned to  
15 Denver around April 2007, where he remained until around April 2012. Since April 2012, Mr.  
16 Moody has worked for UAL at SFO.

17 104. In 2008, while in Denver, Mr. Moody underwent training regarding minimum  
18 qualifications to work as a Lead Ramp Serviceman. Thereafter, he worked as a Lead on  
19 numerous occasions and was paid the Lead Ramp Serviceman pay for each of those occasions  
20 and accrued applicable longevity and seniority.

21 105. Also while Mr. Moody worked in Denver, the local lodge of the International Association  
22 of Machinists and Aerospace Workers protected its members by rejecting the implementation of  
23 the so-called “Card Man Rule,” which would have permitted UAL to pay Lead Ramp  
24 Servicemen at the daily rate of Ramp Servicemen.

25 106. Prior to SFO, Mr. Moody had always received the appropriate daily pay increases  
26 whenever he was required to work out-of-classification as Lead Ramp Serviceman.

27 107. When Mr. Moody started in SFO, however, he immediately noticed the pay discrepancy.  
28

1 108. When Mr. Moody started at SFO, his wages as a Ramp Serviceman were approximately  
 2 \$13.36 per hour. His current rate of pay is approximately \$14.40 per hour.

3 109. In early February 2013, Mr. Moody filed a grievance with IAMAW regarding his lack of  
 4 appropriate compensation for performing Card Person responsibilities.

5 110. Mr. Ajetomobi orally responded to Mr. Moody's grievance immediately and stated that a  
 6 grievance had already been submitted on the workplace practice, and that, "this is the way it's  
 7 done in San Francisco," or words to that effect.

8 111. Mr. Moody was aware of the pay discrepancy since his first day at SFO. He had  
 9 informally brought it to Mr. Ajetomobi's attention before February 2013, to which Mr. Ajetomobi  
 10 stated that Mr. Moody was "no longer in Denver, and this was the San Francisco way," or words  
 11 to that effect.

12 112. After that time, both Mr. Moody and Mr. Smith independently began to talk with other  
 13 UAL co-workers about the pay discrepancy.

14 113. Mr. Moody's grievance was held in abeyance by Defendants IAMAW by subverting their  
 15 policy, pattern, and practice of not processing any other member's grievance while another  
 16 grievance is pending challenging the same work practice, because it was holding the first  
 17 grievance open indefinitely and/or in the alternative flouting the specific grievance procedures  
 18 set forth in Article XVIII of the 2005-2009 Agreement.

19  
 20 **FIRST CAUSE OF ACTION**  
 21 **BREACH OF CONTRACT**  
 22 **(alleged by Plaintiffs against UAL)**

23 114. As a first, separate and distinct claim, Plaintiffs complain of Defendant UAL,  
 24 individually and on behalf of the class, and allege:

25 115. The factual allegations of Paragraphs 1 through 113, above, are re-alleged and  
 26 incorporated herein by reference.

27 116. Plaintiffs, by and through IAMAW, and Defendant UAL, by and through its agents,  
 28 entered into the Agreement, a written contract that governed the terms of Plaintiffs' employment.

1 As stated above, the relevant terms of the Agreement defined the job responsibilities of the  
 2 “Ramp Serviceman” and “Lead Ramp Serviceman” positions. Additionally, as stated above, the  
 3 2005-2009 Agreement provided that Lead Ramp Servicemen were paid approximately \$5-7  
 4 more per hour than Ramp Servicemen of employees with Plaintiffs' seniority, and accrued  
 5 applicable longevity and seniority for such service.

6 117. Plaintiffs undertook employment and duly performed all of the conditions of the  
 7 Agreement by continuing to work for Defendant UAL as dedicated employees, following  
 8 direction, and assuming the greater responsibilities of the Lead Ramp Serviceman position when  
 9 called upon by their employer to do so.

10 118. Defendant UAL, acting in concert with Defendants IAMAW, breached the Agreement  
 11 with Plaintiffs by not compensating them with the appropriate daily pay increase, longevity, and  
 12 seniority, even though they had collectively worked hundreds of days for UAL as unofficial Lead  
 13 Ramp Servicemen, and had bargained for such rights, while all other Ramp Servicemen  
 14 throughout the United system were compensated according to the provisions of the 2005-2009  
 15 agreement.

16 119. Plaintiffs suffered damages legally caused by the breach of contract as set forth below.

17  
 18 **SECOND CAUSE OF ACTION**  
 19 **BREACH OF DUTY OF FAIR REPRESENTATION**  
 20 **(alleged by Plaintiffs against Defendant IAMAW and IAMAW Local Lodge 1781)**

21 120. As a second, separate and distinct claim, Plaintiffs complain of Defendants IAMAW,  
 22 individually and on behalf of the class and allege:

23 121. The factual allegations of Paragraphs 1 through 119 above are re-alleged and  
 24 incorporated herein by reference.

25 122. Jurisdiction arises under 29 U.S.C. § 185, 28 U.S.C. §§ 185, 28 U.S.C. §§ 1331 and  
 26 1337(a), and 28 U.S.C. §§ 2201 and 2202.

27 123. Throughout their employment with UAL, Plaintiffs were represented as union members  
 28 by IAMAW.

1 124. At all relevant times, UAL and IAMAW were parties to the 2005-2009 Agreement, which  
2 governed Plaintiffs' employment. The Agreement was entered into for the benefit of the  
3 employees of Defendant UAL. Plaintiffs were UAL employees entitled to the benefits of the  
4 Agreement, including its pay scale, as set by Article XXVI, Schedule A.

5 125. Plaintiffs allege that as the exclusive bargaining agent for Plaintiffs, Defendants IAMAW  
6 had a duty to represent Plaintiffs fairly in enforcing their rights under the Agreement with UAL,  
7 namely the right to receive the appropriate daily compensation, longevity, and seniority for  
8 performing Lead Ramp Serviceman responsibilities.

9 126. The cases are clear that both in the negotiation and the administration stages of the  
10 collective bargaining process, the Duty of Fair Representation protects the rank and file  
11 employee from arbitrary union conduct. The judicially created doctrine mandates that when the  
12 Union deals for and with its rank and file members, it must act with complete good faith and  
13 honesty.

14 127. As set forth above, while working at airports other than SFO, each of the Plaintiffs  
15 received the appropriate pay increase and/or IAMAW representation regarding compensation  
16 for performing Lead Ramp Serviceman responsibilities, as such the unlawful work practice  
17 complained of and Defendants IAMAW's breaches of duty discriminated against only those  
18 Ramp Servicemen located in the SFO hub.

19 128. Defendant IAMAW has acted in concert with UAL to suppress the appropriate  
20 compensation owed to Ramp Servicemen at SFO per the Agreement by arbitrarily and  
21 intentionally flouting the express requirements of Article XVIII of the 2005-2009 Agreement  
22 and/or mutually agreeing to indefinitely extensions of the grievance deadlines to keep the  
23 grievances from resolution with UAL, with knowledge that UAL's practices, and IAMAW's lack  
24 of representation, were wholly inconsistent with IAMAW's representation at other locations  
25 governed by the 2005-2009 Agreement.

26 129. By their grievances, Plaintiffs have exhausted all available avenues of relief which are  
27 warranted under the circumstances, and any other or further attempts would be inadequate or  
28 futile.

1 130. Plaintiffs allege that Defendants IAMAW improperly handled employee grievances, and  
2 also discriminated against a certain class of employees during the actual bargaining process.

3 131. Plaintiffs seek preliminary and permanent injunctive relief enjoining Defendants UAL  
4 and IAMAW from failing to compensate Plaintiffs at the appropriate daily rate, along with  
5 applicable longevity and seniority for performing Lead Ramp Serviceman work.

6 132. In so doing, IAMAW, acting in concert with UAL, engaged in affirmative and intentional  
7 conduct, not mere negligence, which was not in the interests of Plaintiffs, its union members,  
8 and which breached the duty of fair representation which IAMAW owes all its members.

9  
10 **PRAYER FOR RELIEF**  
11

12 WHEREFORE, Plaintiffs pray on behalf of themselves and other class members similarly  
13 situated for relief as follows:

- 14 1. Certification of this action as a class action pursuant to Fed. R. Civ. P. 23 on  
15 behalf of the members of the class and appointing Plaintiffs and their counsel to  
16 represent the Class;
- 17 2. For general damages in amounts according to proof and in no event in an amount  
18 less than the jurisdictional limit of this court;
- 19 3. For special damages in amounts according to proof;
- 20 4. For injunctive relief restoring class members' longevity and seniority for periods  
21 of uncompensated Lead Ramp Serviceman performance;
- 22 5. For attorneys' fees as provided by law;
- 23 6. For interest as provided by law;
- 24 7. For costs of suit herein; and
- 25 8. For such other and further relief as the Court deems fair and just.

26 ///

27 ///

1 Dated: September 22, 2014

SMITH PATTEN

2 By: /s/ Dow W. Patten

3 SPENCER F. SMITH

4 DOW W. PATTEN

Attorneys for Plaintiffs

5 ARTHUR M. SMITH IV, RICHARD TRAN,  
and AARON T. MOODY

6  
7 **JURY DEMAND**

8 Plaintiffs hereby demand trial by jury of all matters so triable.

9  
10 Dated: September 22, 2014

SMITH PATTEN

11  
12 By: /s/ Dow W. Patten

13 SPENCER F. SMITH

14 DOW W. PATTEN

Attorneys for Plaintiffs

15 ARTHUR M. SMITH IV, RICHARD TRAN,  
and AARON T. MOODY